

REMARKS

Claims 21, 23-29, and 31-37 are pending in this application. Claims 21 and 26-28 have been amended. Support for this amendment may be found in the specification as filed at page 8, lines 16-17 and page 18, lines 14-15. No new matter is added by this amendment.

REJECTION UNDER 35 U.S.C. § 102

Claims 21, 23-29, and 31-37 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,761,887 (the '887 patent), which has a 102(e) date of June 21, 2001. The Examiner contends that the '887 patent teaches non-tissue culture expanded CD105+ cells for cartilage repair.

However, the amended claims require that the CD105+ cells of the invention be autologous to the patient to be treated. The '887 patent does not disclose or suggest the use of a patient's own cells for the repair of cartilage tissue. Accordingly, the '887 patent does not teach all the limitations of the claims and does not anticipate the claimed invention. Applicants request that the rejection under 35 U.S.C. § 102 be withdrawn.

REQUIREMENT FOR PRIORITY SHOWING UNDER 37 CFR 41.202(d)(1)

The Examiner contends that pending claims 21, 23, 36, 27, 28, 32 and 35 are render obvious and are rendered obvious by claim 6 of the '887 patent and that claims 24, 25, 29, 31, 33, 34, 36, and 37 render obvious and are rendered obvious by claim 7 of the '887 patent. The Examiner considers these two patents to claim interfering

subject matter and has requested a showing of priority under 37 CFR 41.202(d)(1).

Applicants respectfully traverse on the grounds that the amended claims are not obvious over the claims or disclosure of the '887 patent. The amended claims require that the CD105+ cells of the invention be autologous to the patient to be treated.

Neither the claims nor the description of the '887 patent teach or suggest the use of autologous cells. Because there is no disclosure or suggestion that a patient's own bone marrow cells could be used for cartilage repair in the '887 patent, there is no motivation to modify its teachings to use autologous cells, and it certainly did not provide a reasonable expectation of success in doing so. Accordingly, the pending claims do not meet the two-way obviousness test required for the identification of interfering claims. M.P.E.P. 2301.02. Applicants request that the requirement for priority showing under 37 CFR 41.202(d)(1) be withdrawn and that the claims be allowed.

In view of the forgoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application, and the timely allowance of the pending claims.

Please grant any extension of time required to enter this response and charge any additional required fees to deposit account 06-0916.

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